

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520—4—4  
APPEAL PROCEDURES FOR EMPLOYEES OF THE STATE SPECIAL SCHOOLS - RELATIVE TO  
ADVERSE JOB ACTIONS**

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**0520—4—4—.01 PURPOSE.**

To provide clear, orderly, and expedient procedures by which all regular employees of the state special schools may appeal decisions relative to adverse job actions.

*Authority:* T.C.A. §§ 49—50—1001. *Administrative History:* Original rule filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective December 15, 1989. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520—4—4—.02 POLICY.**

- (1) Employees will be given every opportunity to resolve bona fide complaints regarding adverse job actions through established procedures. Every reasonable effort will be made to resolve complaints at the lowest possible step in the procedure.
- (2) Employees using this procedure will be entitled to process their appeals without fear, restraints, interference, coercion, discrimination, or reprisal. Violators of this provision will be reported to the State Board of Education, or to the Commissioner of Education when acting under delegated authority from the board, and may be subject to disciplinary action.

*Authority:* T.C.A. §§ 49—50—1001. *Administrative History:* Original rule filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective December 15, 1989. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520—4—4—.03 DEFINITIONS.**

- (1) "Adverse job action" means any direct form of discipline or penalty, including dismissal, demotion, transfer, disciplinary reassignment, suspension, written reprimand, and unsatisfactory or below standard performance evaluation.
- (2) "Appellant" means an employee who is affected by an adverse job action and seeks a remedy as set out in the procedures below.
- (3) "Commissioner" means the Commissioner of Education.
- (4) "Demotion" means a reduction in job classification coupled with a reduction in pay exceeding one step on the former pay schedule.
- (5) "Employee" means any person in the employment of the state special schools who has completed the mandatory probationary period, including licensed/certificated employees, but does not include interim, emergency, temporary, and part-time employees. For the purposes of this rule, "employee" shall not include licensed/certificated employees suspended or served with charges that will result in a hearing

(Rule 0520-4-4-.03, continued)

- pursuant to the Rules, Regulations, and Minimum Standards of the State Board of Education, Chapter 0520-4-1.
- (6) "Board" means the State Board of Education.
  - (7) "Executive Director" means Executive Director of the State Board of Education.
  - (8) "Department" means the State Department of Education.
  - (9) "Interim, emergency, temporary, and part-time employees" are defined as follows:
    - (a) "Interim employee" is a person appointed to a position for a period not to exceed one year;
    - (b) "Emergency employee" is a person appointed to a position for a period not to exceed 120 days, when necessity makes it impractical or impossible to fill the position through standard appointment procedures;
    - (c) "Temporary employee" is a person appointed to a position for a specified period, usually less than six months; and,
    - (d) "Part-time employee" is a person appointed to work a schedule which generally entails working less than 1600 hours for a 12 month school year and 1300 hours for a ten month school year.
  - (10) "Superintendent" means the person, of whatever title, acting as the chief administrative officer of each state special school.

**Authority:** T.C.A. §§ 49—50—1001. **Administrative History:** Original rule filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective December 15, 1989. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520—4—4—.04 RESPONSIBILITY.**

- (1) The State Board of Education will be responsible for providing and maintaining the basic standards and guidelines for the rules.
- (2) The Commissioner of Education, acting under delegated authority from the State Board of Education, will be responsible for the proper effectuation of these rules throughout the state special schools. Modification of these procedures may be made in order to satisfy unusual circumstances within the state special schools if such modification is approved by the board.
- (3) The commissioner will be responsible for ensuring that all employees and supervisory personnel are aware of the provisions of these rules.

**Authority:** T.C.A. §§ 49—50—1001. **Administrative History:** Original rule filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective December 15, 1989. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520—4—4—.05 BASIC STANDARDS.**

- (1) An appeal must be filed with the Commissioner of Education within 30 calendar days after receiving notification of the superintendent's decision on the adverse job action. Otherwise, the appeal will be considered untimely and invalid.

(Rule 0520-4-4-.05, continued)

- (2) A standard appeal in the form of a signed letter from the appellant shall be submitted to the Commissioner of Education. The letter shall state, with particularity, the grounds for the appeal.
- (3) Appellants, if they so desire, may be assisted or represented by another employee of the same school at each step of the appeals procedure.
- (4) Legal counsel or other outside counsel may only represent an appellant before a hearing conducted under the provisions of the Uniform Administrative Procedures Act, which is the final step of this procedure. The appellant and the State Department of Education may have counsel present at discussions prior to the final step, but only to advise and observe and not to participate as advocate.
- (5) Appellants may present appeals during business hours or other mutually agreeable hours as work situations may require. An appeal heard during an appellant's, witness', assistant's, or representative's scheduled off-duty hours will be considered overtime work, provided the person is still actively employed by the state special schools. Appellant, employees who appear with the appellant, State Department of Education employees, and employees who are subpoenaed as witnesses will not be required to use leave for such periods.
- (6) Appeals relative to suspension without pay must first be taken to the lowest step in the appeals procedure with authority to overturn, reduce, or alter the action.
- (7) Appeals relative to dismissal may be taken directly to the commissioner or his designated representative for this purpose.
- (8) Appeals concerning alleged discrimination, prohibited by T.C.A. 4-21-401 and in connection with race, creed, color, religion, sex, national origin, age, or handicap, may be appealed informally to the superintendent. The grounds for such appeals may also be grounds for filing charges with the Tennessee Human Rights' Commission at any time. If the employee is not satisfied with the superintendent's decision, the appeal may be taken directly to the commissioner or his designated representative. If the appellant is unsatisfied with the decision of the commissioner or that of his designated representative, the appellant may appeal directly to the Tennessee Human Rights Commission which is empowered by T.C.A. 4-21-202 to investigate such matters.
- (9) Appeals decisions, with specific reasons for the decision, must be communicated in writing directly to the appellant in a timely manner as outlined below. Certified mail, return receipt requested, is mandatory if a decision is mailed.
- (10) Appeals must be expressed in reasonable terms. Each appeal submitted should contain: (a) the basis for appeal; (b) the settlement or corrective action desired by the appellant; and, (c) sufficient supporting information to begin an investigation.
- (11) Appeals of Career Ladder evaluations must be pursued according to the provisions set out in T.C.A. 49-5-5009. No Career Ladder appeal may be pursued under the provisions of these rules.

**Authority:** T.C.A. §§ 49—50—1001. **Administrative History:** Original rule filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective December 15, 1989. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520—4—4—.06 PROCEDURES.**

- (1) Procedure shall not entail more than three steps to finality as follows:
  - (a) Step 1 - Appellant's superintendent (formal)

(Rule 0520-4-4-.06, continued)

1. Verbal discussion with superintendent within 15 workdays of cause;
  2. Superintendent's investigation and fact finding; and,
  3. Decision clearly communicated to appellant by the superintendent within five workdays of the discussion.
- (b) Step 2 - Appeal to the Commissioner of Education or his designee (formal)
1. Appellant prepares a letter requesting a hearing. The letter must be signed and is to state, with particularity, the basis of the appeal.
  2. The commissioner or his designee conducts a hearing on the matter within 15 working days of the receipt of the appeal. The hearing will include a discussion of the facts, allegations of the parties, and proposals for relief.
  3. Investigation, fact finding, and written decisions will be communicated to the appellant within ten working days after the hearing.
- (c) Step 3 - Appeal to the State Board of Education (UAPA)
1. Within 30 working days of receipt of an adverse ruling from the Commissioner of Education or his designee, appellant may appeal the decision to the State Board of Education through the executive director.
  2. The chairman shall set the matter for a contested case hearing either in the presence of the board or by an administrative law judge or hearing officer sitting alone, pursuant to T.C.A. 4-5-301(c). The board's decision shall be concurred in by a majority of those present and voting at the meeting when the board issues its order.
  3. Hearings conducted at Step 3 will conform to the model rules of the Secretary of State for contested cases and the State Board of Education hereby adopts Rule 1360-4-1 in statutory compliance.
  4. The Executive Director of the State Board of Education shall notify the appellant, in writing within 15 working days of the board meeting, of the action of the board.
  5. The hearing conducted pursuant to the provisions of the Uniform Administrative Procedures Act and outlined in Step 3 shall be the final step for all appeals for regular employees.

**Authority:** T.C.A. §§ 49—50—1001. **Administrative History:** Original rule filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective December 15, 1989. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520—4—4—.07 TECHNICAL ADVICE AND ASSISTANCE.**

- (1) Technical questions regarding this rule may be resolved by contacting the Personnel Section of the State Department of Education.
- (2) The intent of this policy is to legally, efficiently, and fairly resolve bona fide complaints regarding adverse job actions. The initiation of an appeal should not be considered as a negative reflection against any employee, but should be considered an effort to communicate and to seek information toward resolving work related problems.

(Rule 0520-4-4-.07, continued)

- (3) In all cases, all parties should consider appeals objectively, fairly, and expeditiously while maintaining a helpful, cordial, and professional attitude.

**Authority:** T.C.A. §§ 49—50—1001. **Administrative History:** Original rule filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective December 15, 1989. Repealed and new rule filed March 16, 1992; effective June 29, 1992.